



TALK TO EXPERTS – SERIES-7

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In continuation of what we saw last week about the banks refusing to accept first charge of NHAII, let us see some more points about the first charge.

Charge creation means bestowing legal right on the lender over the assets of the borrower. It becomes essential to protect the principal money lent and the interests for it in case the borrower is not able to pay the loan back in terms agreed upon. This becomes the fundamental obligation of the bank since it handles public money on trust.

More than one charge can be created against the same assets under justifying circumstances to the conviction of the bank. To put it simply,

the first lender is the first charge and the next lender is the second charge.

In the process of recovery, the first charge must be cleared before the second charge gets the right over the assets. If after clearing the loan of the first charge, whatever assets remain, the second charge now becoming the first charge, come under the second charge.

To complete the highway projects that are languishing for quite some time, the NHAI came forward to give financial assistance provided it was given the first charge. The banks are not prepared to accept the NHAI as the first charge because, in the final analysis, the benefits of the project will go to the NHAI first, that is, the revenue that is generated from the projects will go to the NHAI as the first charge and the banks are to become the second charge, made to wait perhaps for a very long time to recover the principal and the accruals.

The NHAI says the receivables from the two kinds of projects, Toll and Annuity projects, must be the right of the first charge. Now, what are these two projects, Toll and Annuity, in nature?

Toll and Annuity are two forms of another project generally known as Build Operate and Transfer. In essence, all these projects are conceived to generate finance for the projects and some more revenue for the money invested in the project.

Without using any legal and current technical terminology, BOT project means that an entity, an individual or a group of individuals, is given a project by the government to implement it. The entity, called concessionaire, invests in the project to build the structure first, then operate it for some specific period and finally transfer this structure to the government. In the process, it gets back the money it invested and some additional money as income for him from the project.

Many governments all over the world adopt this BOT model to improve the infrastructure of the country, thereby try to achieve better economy for the country. Next, we will see some more of these projects and their nature and the differences between them.